

HOUSE BILL NO. 361

INTRODUCED BY GALLIK

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE OPENCUT MINING ACT; AMENDING DEFINITIONS; PROVIDING FOR ABATEMENT, SUSPENSION, AND REVOCATION ORDERS; PROVIDING FOR ANNUAL FEES; ~~ELIMINATING~~ REVISING APPLICATION FEES; REVISING APPEAL PROVISIONS; REQUIRING LANDOWNER CONSENT TO RECLAMATION; AMENDING SECTIONS 82-4-402, 82-4-403, ~~82-4-405, 82-4-405~~, 82-4-406, 82-4-422, 82-4-424, 82-4-425, 82-4-426, 82-4-427, 82-4-431, 82-4-432, 82-4-433, 82-4-434, 82-4-436, AND 82-4-441, MCA; REPEALING SECTION 82-4-423, MCA; AND PROVIDING AN APPLICABILITY DATE AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Annual report.** For each permitted opencut mining operation, the permittee shall file an annual report with the department that describes the progress of mining and reclamation and the results of monitoring activities. The report must be filed in accordance with rules adopted by the board.

Section 2. Section 82-4-402, MCA, is amended to read:

"82-4-402. Intent, findings, and policy. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Opencut Mining Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) Because the extraction and use of opencut materials is important to the economy of this state, it is the policy of this state to provide for the reclamation and conservation of land subjected to opencut ~~materials~~ mining operations. Therefore, it is the purpose of this part:

(a) to preserve natural resources;

(b) to aid in the protection of wildlife and aquatic resources;

(c) to safeguard and reclaim through effective means and methods all agricultural, recreational, home, and industrial sites subjected to or that may be affected by opencut ~~materials~~ mining operations;

- (d) to protect and perpetuate the taxable value of property through reclamation;
- (e) to protect scenic, scientific, historic, or other unique areas; and
- (f) to promote the health, safety, and general welfare of the people of this state."

Section 3. Section 82-4-403, MCA, is amended to read:

"82-4-403. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Affected land" means the area of land and land covered by water that is disturbed by opencut mining operations, including the area from which overburden or material is to be or has been removed and upon which the overburden is to be or has been deposited, existing private roads that are used and roads constructed to gain access to the material, areas of processing facilities on or contiguous to the opencut mine, treatment and sedimentation ponds, and material stockpile areas on or contiguous to the opencut mine. FOR THE PURPOSES OF THIS SUBSECTION, AN EXISTING PRIVATE ROAD MAY BE CLASSIFIED AS AFFECTED LAND ONLY WITH THE LANDOWNER'S CONSENT.

(2) "Board" means the board of environmental review provided for in 2-15-3502.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(4) "Final cut" means the last pit created in an opencut-mined area.~~

~~(5)~~(4) "Landowner" means the owner of land subjected to an ~~opencut-mining~~ opencut mining operation.

~~(6)~~(5) "Materials" means bentonite, clay, scoria, peat, sand, soil ~~materials~~, or gravel.

~~(7)~~(6) "Opencut mining operations" means the ~~mining of materials by~~ following activities:

(a) (i) removing the overburden lying upon natural deposits of materials and mining directly from the exposed natural deposits; or

~~(b)~~(ii) mining directly from natural deposits of materials;

(b) mine site preparation, including access;

(c) processing, transporting material within the permit area, and storing or stockpiling materials; and

(d) reclamation of affected land.

~~(8)~~(7) "Operator" means a person engaged in or controlling an ~~opencut-mining~~ opencut mining operation.

~~(9)~~(8) "Overburden" means ~~all of the earth and other materials that lie~~ lies above a natural deposit of materials.

~~(10)~~(9) "Person" means:

- (a) a natural person;
- (b) a firm, association, partnership, cooperative, or corporation;
- (c) a department, agency, or instrumentality of the state or any governmental subdivision; or
- (d) any other entity.

~~(10)~~ "Plan of operation" means a plan that:

- (a) meets the requirements of 82-4-434; and
- (b) contains a description of current land use, topographical data, water data, soils data, intended mine areas, proposed mining and processing operations, and proposed reclamation of the land, including appropriate maps.

(11) "Processing facilities" means:

- ~~(a) all~~ (a) crushers, screens, and pug mills;
- (b) asphalt, wash, or concrete plants; and
- (c) other equipment used in processing opencut materials.

~~(12)~~ "Progress report" means a report on a form provided by the department, with appropriate maps, that shows:

- ~~—— (a) any change in ownership or control of the affected land and includes a landowner consent form if a change has occurred;~~
- ~~—— (b) any change in personnel who are in charge of the operation or responsible for reclamation;~~
- ~~—— (c) any change in any contractors or subcontractors who will be working at the site; and~~
- ~~—— (d) all land that has been affected by the operation.~~

~~(13)~~(12) "Reclamation" means the reconditioning of ~~the area of land~~ affected land ~~by opencut mining operations~~ to make the area suitable for productive use, including but not limited to forestry, agriculture, grazing, wildlife, recreation, or residential and industrial sites.

~~(14)~~"Reclamation plan" means a plan that:

- ~~—— (a) meets the requirements of 82-4-434; and~~
- ~~—— (b) contains a description of current land use, topographical data, water data, soils data, leased areas, and intended mine areas and an explanation of proposed reclamation of the land, including appropriate maps.~~

~~(15)~~(13) "Refuse" means all waste material directly connected with the ~~opencut mining~~ opencut mining operations.

(16)(14) "Soil materials" are those horizons that contain topsoil or other soils leached free of deleterious salts means the dark or root-bearing surface matter that has been generated through time by the interaction of biological activity, climate, topography, and parent material, that are is capable of sustaining plant growth, and that are is recognized and identified as such soil by standard authorities and methods.

(17) "Spoil" means the overburden that is disturbed from its natural state in the process of opencut mining."

~~Section 4. Section 82-4-405, MCA, is amended to read:~~

~~"82-4-405. Inapplicability to government. The provisions of this part relating to fees or bonds do not apply to the federal government or its agencies, the state of Montana, counties, cities, or towns."~~

SECTION 4. SECTION 82-4-405, MCA, IS AMENDED TO READ:

"82-4-405. Inapplicability to government. The Except as provided in 82-4-432, the provisions of this part relating to fees or bonds do not apply to the federal government or its agencies, the state of Montana, counties, cities, or towns."

Section 5. Section 82-4-406, MCA, is amended to read:

"82-4-406. Exemption -- opencut mining operations on federal lands. This part is not applicable to opencut mining operations on certain federal lands as specified by the board, provided it is first determined by the board that federal law or regulations issued by the federal agency administering the land impose controls for mining of, processing of materials on, and reclamation of those lands equal to or greater than those imposed by this part."

Section 6. Section 82-4-422, MCA, is amended to read:

"82-4-422. Powers, duties, and functions. (1) The department has the powers, duties, and functions to:

(a) issue permits when it is found on the basis of the information set forth in the application and an evaluation of the operation proposed opencut mining operations, including reclamation, it is found by the department that the requirements of this part and rules adopted to implement this part will be observed ~~and that the operation and the reclamation of the affected area can be carried out consistently with the purpose of this~~

1 part;

2 (b) amend permits in accordance with the provisions of 82-4-436;

3 (c) reclaim any affected land with respect to which a bond has been forfeited; ~~and~~

4 (d) make investigations or inspections that are considered necessary to ensure compliance with any
5 provision of this part; ~~and~~

6 (e) enforce and administer the provisions of this part and issue orders necessary to implement the
7 provisions of this part; AND

8 (F) ASSESS AN ANNUAL FEE ON OPERATORS OF ALL PERMITTED OPENCUT MINING OPERATIONS. THE ANNUAL FEE
9 MUST BE PAID ON ALL PERMITTED ACREAGE FOR WHICH FINAL BOND RELEASE HAS NOT BEEN GRANTED. THE ANNUAL FEE
10 IS:

11 (I) \$75 IF THE PERMITTED ACREAGE IS LESS THAN OR EQUAL TO 25 ACRES;

12 (II) \$150 IF THE PERMITTED ACREAGE IS GREATER THAN 25 ACRES AND LESS THAN OR EQUAL TO 50 ACRES;

13 (III) \$300 IF THE PERMITTED ACREAGE IS GREATER THAN 50 ACRES AND LESS THAN OR EQUAL TO 100 ACRES;

14 AND

15 (IV) \$600 IF THE PERMITTED ACREAGE IS GREATER THAN 100 ACRES.

16 (2) The board shall:

17 (a) adopt rules that pertain to opencut mining operations in order to accomplish the purposes of this
18 part;

19 (b) adopt rules;

20 (i) establishing uniform procedures for filing of necessary records;

21 (ii) providing procedures for the issuance of permits and filing of annual reports; ~~AND~~

22 ~~— (iii) prescribing fees to be assessed annually by the department on operators of all permitted opencut~~
23 ~~mining operations that are sufficient to fund the amount appropriated by the legislature for the department's costs~~
24 ~~in administering this part after subtracting appropriations from the general fund and from other sources for~~
25 ~~administering this part. The board shall base its determination of the fee to be paid by operators on the acreage~~
26 ~~permitted or categories of acreage permitted. The annual fee must be paid on all permitted acreage for which~~
27 ~~final bond release has not been granted. and~~

28 ~~(iv)(III) for any other matters of administration not specifically enumerated in~~ providing other
29 administrative requirements that the board considers necessary to implement this part; and

30 (c) conduct hearings and, for the purposes of conducting those hearings, administer oaths and

1 affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the production
2 of any books, papers, correspondence, memoranda, agreements, documents, or other records relevant or
3 material to the inquiry."

4
5 **Section 7.** Section 82-4-424, MCA, is amended to read:

6 **"82-4-424. Receipt and expenditure of funds -- disposition of fees, fines, penalties, and other**
7 **money.** (1) The department may receive any federal funds, state funds, or any other funds for the reclamation
8 of ~~land~~ affected ~~land~~ by opencut mining. The department may cause the reclamation work to be done by its
9 employees, by employees of other governmental agencies, by soil conservation districts, or through contracts
10 with qualified persons.

11 (2) All ~~fees, fines, penalties, and other money, except annual fees,~~ paid under the provisions of this part
12 must be deposited in the environmental rehabilitation and response account in the state special revenue fund
13 provided for in 75-1-110. Funds held by the department as bond or as a result of bond forfeiture that are no
14 longer needed for reclamation and for which the department is not able to locate a surety or other person who
15 owns the funds after diligent search must be deposited in the environmental rehabilitation and response account
16 in the state special revenue fund.

17 (3) Annual fees must be deposited in the state special revenue fund and used to pay the costs of
18 administering this part."

19
20 **Section 8.** Section 82-4-425, MCA, is amended to read:

21 **"82-4-425. Inspection of opencut mining operations.** The department or its accredited
22 representatives may enter upon lands subjected to opencut mining operations at all reasonable times for the
23 purpose of inspection to determine whether the provisions of this part have been complied with."

24
25 **Section 9.** Section 82-4-426, MCA, is amended to read:

26 **"82-4-426. Reclamation of land on which bond forfeited.** In keeping with the provisions of this part,
27 the department ~~may~~ shall reclaim any affected ~~lands~~ land with respect to which a bond has been forfeited. ~~If the~~
28 ~~amount of the forfeited bond exceeds the cost of reclamation, the excess must be deposited in the~~
29 ~~environmental rehabilitation and response account in the state special revenue fund provided for in 75-1-110."~~

1 **Section 10.** Section 82-4-427, MCA, is amended to read:

2 **"82-4-427. Hearing -- appeal -- venue.** (1) A person ~~who is aggrieved~~ whose interests are or may be
3 adversely affected by a final decision of the department to approve or disapprove a permit application and
4 accompanying materials or a permit amendment application and accompanying materials under this part is
5 entitled to a hearing before the board; if a written request stating the reasons for the appeal is submitted to the
6 board within 30 days of the department's decision. A permittee may request a hearing before the board on a final
7 decision of the director pursuant to 82-4-436(4) by submitting a request for a hearing within 15 days of receipt
8 of the notice of the director's decision.

9 (2) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part
10 6, apply to a hearing held under this section.

11 (3) ~~An action to challenge the issuance of a permit~~ A petition for judicial review of a board decision
12 made pursuant to this section must be brought in the county in which the permitted activity is proposed to occur
13 OR, IF MUTUALLY AGREED ON BY BOTH PARTIES IN THE ACTION, IN THE FIRST JUDICIAL DISTRICT, LEWIS AND CLARK
14 COUNTY. If an activity is proposed to occur in more than one county, the action may be brought in any of the
15 counties in which the activity is proposed to occur.

16 (4) ~~A judicial challenge to a permit issued pursuant to this part by a party other than the permitholder~~
17 ~~or applicant~~ The petition for judicial review must include the party to whom the permit was issued unless
18 otherwise agreed to by the permitholder or applicant. All judicial challenges of permits for projects with a project
19 cost, as determined under 75-1-203, of more than \$1 million must have precedence over any civil cause of a
20 different nature pending in that court. If the court determines that the challenge was without merit or was for an
21 improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in
22 litigation, the court may award attorney fees and costs incurred in defending the action."
23

24 **Section 11.** Section 82-4-431, MCA, is amended to read:

25 **"82-4-431. Permit for mining, processing, and reclamation required.** (1) An operator may not
26 conduct ~~opencut mining~~ opencut mining operations that result in the removal of a total of 10,000 cubic yards or
27 more of materials and overburden until the department has issued a permit to the operator ~~for the reclamation~~
28 ~~of the land affected.~~ A person may not, without a permit, remove materials or overburden from a site from which
29 a total of 10,000 cubic yards or more of materials and overburden in the aggregate has been removed. An
30 operator conducting a number of operations, each of which results in the removal of less than 10,000 cubic yards

1 of materials and overburden but that result in the removal of 10,000 cubic yards or more of materials and
2 overburden in the aggregate, is subject to the provisions of this part, except as provided in this section.

3 (2) Except as provided in or conditioned under subsections (3) and (4), an operator who holds a permit
4 ~~for reclamation~~ may ~~operate an~~ conduct opencut ~~mine~~ mining operations without first securing an additional
5 permit or an amendment to ~~the~~ an existing permit or bond if the mine meets the following criteria:

6 (a) the total amount of materials and overburden removed from the site does not exceed ~~2,500~~ 5,000
7 cubic yards and the total area from which the material and overburden is removed does not exceed 1 acre; and

8 (b) the operator;

9 (i) ~~notifies~~ submits site, opencut mining operations, and reclamation information on a form provided by
10 the department prior to beginning ~~the operations and~~ operation;

11 (ii) within ~~30~~ 90 days of ~~notifying the department~~, ~~submits a completed site information~~ submitting the
12 form, salvages and stockpiles all root-bearing soil materials from the area to be disturbed, removes the
13 materials, regrades ~~grades~~ the affected area land to 3:1 or flatter ~~slope~~ slopes and blends the ~~reclaimed area~~
14 graded areas into the ~~adjacent~~ surrounding topography, ~~and during the first appropriate growing season,~~
15 replaces all topsoil soil, and reclaims to premining conditions all access roads used for the operation, unless the
16 landowner requests in writing that specific roads or portions of roads remain open. Roads left open at the
17 landowner's request must, after mining, be sized to support the postmining use of the road, and

18 (iii) at the first seasonal opportunity, reseeds seeds or revegetates as required by the department plants
19 all affected land with vegetative species that meet the requirements of 82-4-434.

20 (3) The department may refuse to approve an application for issuance of a permit under subsection (1)
21 or ~~allow~~ may prohibit the operator ~~to operate~~ from conducting an opencut ~~mine~~ mining operations under
22 ~~subsections (1) and subsection~~ (2) if, at the time of notification by the operator to the department, the operator
23 has a pattern of violations or is in current violation of this part, rules adopted under this part, or provisions of a
24 permit ~~for reclamation~~.

25 (4) The department may require an additional bond as a condition for the ~~operation~~ conduct of ~~an~~
26 opencut ~~mine~~ mining operations under subsection (2).

27 (5) Opencut ~~mines~~ mining operations described in subsection (2) may not ~~be placed~~ occur:

28 (a) in ~~flowing~~, ephemeral, ~~or~~ intermittent, or perennial streams;

29 (b) in the bottom or head of a confined drainage;

30 (c) in an area where the ~~operation~~ opencut mining operations will intercept surface water, ground water,

or intercept any slope that is naturally steeper than 3:1; or

(d) in any area where mining would be restricted by other laws.

(6) Sand and gravel opencut ~~mines~~ mining operations must meet applicable local zoning regulations adopted under Title 76, chapter 2."

Section 12. Section 82-4-432, MCA, is amended to read:

"82-4-432. Application for permit -- contents -- issuance -- amendment. (1) Applications for a permit must be made upon ~~a form~~ forms furnished by the department. ~~The form and~~ must contain the following:

(a) the name of the operator and, if other than the owner of the land, the name and address of the owner;

(b) the type of operation to be conducted;

(c) the estimated volume of ~~earth overburden and materials~~ to be removed, ~~as accurately as the volume may then be estimated, and the volume that has been previously removed, if any;~~

(d) the location of the ~~operation~~ opencut mining operations by legal description ~~subdivision, section, township and range;~~ and county;

(e) the date when the ~~operation was~~ opencut mining operations were or will be commenced; and

(f) a statement that the applicant has the legal right ~~and power, by legal estate owned;~~ to mine, ~~by opencut mining; the designated materials in~~ the lands described.

(2) The application must be accompanied by:

(a) a bond or security meeting the requirements as set out in this part;

~~(b) a fee of \$50 for an application to mine bentonite, clay, scoria, sand, or gravel;~~

(B) A FEE OF \$100 FOR AN APPLICATION BY A GOVERNMENT AGENCY REFERRED TO IN 82-4-405 TO MINE BENTONITE, CLAY, SCORIA, SAND, OR GRAVEL AFTER JANUARY 1, 2006;

~~(c)(b)(C)~~ a statement from the local governing body having jurisdiction over the area to be mined certifying that a proposed sand and gravel opencut ~~mine~~ mining operation and its ~~operating and reclamation plans~~ plan of operation comply with applicable local zoning regulations adopted under Title 76, chapter 2; ~~and~~

~~(d)(c)(D)~~ the operator's plan of operation ~~and a complete reclamation plan. that meets the requirements~~ of 82-4-434; and

~~(d)(E)~~ written consent of the landowner to the proposed reclamation.

(3) If, prior to applying for a permit, a person notifies the department of the intention to submit an

1 application and requests ~~that~~ the department ~~to~~ examine the area to be mined, the department shall ~~cause the~~
2 ~~area to be examined~~ examine the area and make recommendations to the person regarding opencut mining
3 operations and reclamation. The person may request a meeting with the department. The department shall hold
4 a meeting if requested.

5 (4) Except as provided in 75-1-208(4)(b), upon receipt of an application containing all items listed in
6 subsections (1) and (2), the department shall, within ~~45~~ 30 days, inspect the proposed site and notify the person
7 as to whether or not the department believes that the application is complete acceptable. An application is
8 acceptable if it complies with all requirements of subsections (1) and (2). The department shall approve an
9 acceptable application. If the department determines that the application is not ~~complete acceptable~~, the
10 department shall include in the notification a detailed identification of all deficiencies. Within 30 days of receipt
11 ~~of a complete application~~ the applicant's responses to the identified deficiencies, the department shall notify the
12 applicant if it has approved or denied the application. If the department denies the application, the notice must
13 include a detailed explanation describing why the application was denied. The department may for sufficient
14 cause extend either 30-day review ~~its period of review~~ for an additional 30 days if it notifies the person of the
15 extension prior to the end of the respective original 30-day period. The department shall include in the
16 notification of extension the reason for the extension. Upon approval of the application, the department shall
17 issue a permit to the operator that entitles the operator to continue or engage in opencut mining operations on
18 the land described in the application.

19 (5) An operator desiring to have a permit amended ~~to cover additional contiguous or nearby land~~ may
20 file an ~~amended~~ amendment application with the department. Upon receipt of the ~~amended~~ amendment
21 application and any additional bond that may be required and upon agreement to the terms of the amendment
22 by the parties, the department may issue an amendment to the original permit ~~covering the additional land~~
23 ~~described in the amended application without the payment of any additional fee.~~

24 (6) An operator may withdraw any land covered by a permit, except affected land, by notifying the
25 department of the withdrawal, in which case ~~the penalty of~~ the bond or security filed by the operator pursuant
26 to the provisions of this part must be reduced proportionately."
27

28 **Section 13.** Section 82-4-433, MCA, is amended to read:

29 **"82-4-433. Bond.** (1) ~~A~~ Before a permit may be issued, a bond required to be filed under this part by
30 ~~the operator must be in a form that the department prescribes,~~ made payable to the state of Montana and

1 conditioned upon the operator's full compliance with all requirements of this part, the rules adopted pursuant to
2 this part of the board, and the permit must be submitted to the department. The bond must be signed by the
3 ~~landowner or operator, as appropriate~~, as principal, and by a good and sufficient corporate surety licensed to
4 do business in the state of Montana, ~~as surety~~. ~~The bond must be in an amount not to exceed the costs of~~
5 ~~restoration required by this part as determined by the department. The amount of the bond may not be less than~~
6 ~~\$200 or more than \$1,000 an acre unless the department determines, in writing, that the cost of restoration of~~
7 ~~the land exceeds \$1,000 an acre. Upon the cost determination, the~~ The bond amount must be set by the
8 department at the cost of restoring reclamation of the affected land by the department.

9 (2) In lieu of ~~the submitting a surety bond pursuant to subsection (1)~~, the operator may deposit with the
10 department cash, government securities, a letter of credit in a form acceptable to the department, or a bond with
11 property sureties in an amount equal to that of the required bond on conditions as prescribed in this part. In the
12 discretion of the department, surety bond requirements may be fulfilled by the operator's posting a bond with
13 land and improvements and facilities located on the land as security, in which event a surety may not be required
14 but the department may require that the amount of the bond be adjusted to reimburse the department for
15 foreclosure costs. The penalty of the bond or amount of cash and securities must be increased or reduced from
16 time to time as provided in this part.

17 (3) The bond or security remains in effect until the affected land has been reclaimed as provided under
18 the permit and the department has reclamation has been approved the reclamation and the bond or security has
19 been released by the department the bond or security. The bond or security may cover only actual affected land
20 and ~~may~~ must be increased or reduced to cover only those acreages ~~as that~~ remain unreclaimed.

21 (3)(4) If the license of a surety ~~upon that has issued~~ a bond filed with the department pursuant to this
22 part is suspended or revoked, the operator, within 30 days after receiving notice of the suspension or revocation
23 from the department, shall substitute ~~for that surety~~ a good and sufficient bond from another surety licensed to
24 do business in the state or shall substitute another type of bond pursuant to subsection (2). Upon failure of the
25 operator to make a substitution of surety bond within the 30-day time period, the department ~~may~~ shall suspend
26 the permit of the operator to conduct opencut mining operations upon the land described in the permit until the
27 substitution has been made. If the operator demonstrates in writing that the operator has been pursuing bond
28 replacement in good faith but additional time is necessary to complete the transaction, the department may grant
29 up to an additional 60 days for an operator to submit a replacement bond before suspending the permit.

30 (4) ~~The department shall cause the reclamation of any affected land with respect to which a bond has~~

1 ~~been forfeited.~~

2 (5) Whenever an operator has completed SOME OR all of the requirements under the provisions of this
3 part as to ~~any a portion of the~~ ANY affected land, the operator shall notify the department of the completed
4 requirements. IF AN OPERATOR INCLUDES THIS NOTIFICATION AND A REQUEST FOR FULL OR PARTIAL BOND RELEASE IN
5 AN ANNUAL REPORT REQUIRED UNDER [SECTION 1] THAT IS FILED BY ANY DEADLINE ESTABLISHED BY THE BOARD FOR
6 FILING ANNUAL REPORTS, THE DEPARTMENT SHALL GRANT OR DENY THE REQUEST WITHIN 8 MONTHS OF THE DEADLINE
7 FOR FILING THE ANNUAL REPORT. ANY DENIAL MUST CITE THE SPECIFIC OBLIGATION UNDER THIS PART NOT MET BY THE
8 OPERATOR. If the ~~board~~ department releases the operator from further obligation regarding any affected land,
9 the penalty of the bond must be reduced proportionately. Upon completion of all obligations secured by a bond,
10 the department shall release the bond."

11
12 **Section 14.** Section 82-4-434, MCA, is amended to read:

13 **"82-4-434. ~~Reclamation plan part of permit~~ Plan of operation -- requirements.** ~~The reclamation plan~~
14 ~~must meet the following requirements:~~

15 (1) ~~The department shall submit each reclamation plan or operator proposed amendments to the~~
16 ~~reclamation plan to the landowner for recommendations and shall consider those recommendations in deciding~~
17 ~~whether to approve or disapprove any plan or operator proposed amendments. The department may seek~~
18 ~~technical help from any state or federal agency.~~ The department shall immediately submit ~~the~~ a plan of operation
19 received in a permit or permit amendment application ~~immediately~~ to the state historic preservation office for
20 evaluation of possible archaeological or historical values in the area to be mined.

21 (2) The department ~~may~~ shall approve a ~~reclamation plan~~ of operation ~~only~~ if the department has found
22 that the plan ~~provides for the best possible reclamation under the circumstances at the time, so of operation~~
23 complies with the requirements of this part and rules adopted pursuant to this part and that after opencut mining
24 operations are completed, the affected land will be reclaimed to a productive use. Once the ~~reclamation~~ plan
25 of operation ~~is accepted, in writing, by the department, the plan it must become~~ becomes a part of the permit
26 but is subject to annual review and ~~modification~~ amendment by the department. Any ~~modification~~ amendment
27 by the department must comply with the provisions of 82-4-436(2).

28 (2)(3) The department may not approve a ~~reclamation plan or a plan of operations~~ operation unless the
29 ~~plans provide~~ plan of operation provides:

30 (a) that the affected land will be reclaimed for one or more specified uses, including but not limited to

1 forest, pasture, orchard, cropland, residence, recreation, industry, habitat for wildlife, including food, cover, or
2 water, or other uses;

3 ~~(b) that to the extent reasonable and practicable, the operator will establish vegetative cover~~
4 ~~commensurate with the proposed land use;~~

5 ~~(e)(b) that~~ whenever operations result in a need to prevent acid drainage or sedimentation on or in
6 adjoining lands or streams, ~~for the construction of earth dams~~ catchments, ponds, or other reasonable devices
7 to control water drainage and sedimentation will be constructed and maintained, provided the ~~formation of the~~
8 ~~impoundments or~~ devices will not interfere with other landowners' rights or contribute to water pollution;

9 ~~(d)(c) that to accomplish practical utilization of soil and other suitable overburden materials, the material~~
10 ~~will be salvaged and utilized for placement~~ replaced on affected land areas, ~~if~~ when required ~~by~~ for the
11 ~~reclamation plan~~ postmining land use after completion or termination of that particular phase of the opencut
12 mining operations, ~~at a depth sufficient for plant growth on slopes of 3:1 or less.~~ The depth of soil and other
13 suitable overburden materials to be placed on the reclaimed area must be specified in the plan.

14 ~~(e)(d) that grading will be commensurate with the~~ result in a postmining topography sought and
15 conducive to the designated postmining land use designated;

16 ~~(f)(e) that metal and other waste will be removed or buried onsite in a manner that protects water quality~~
17 and is compatible with the postmining land use or will be disposed of offsite in accordance with state laws and
18 rules;

19 ~~(g)(f) that all access, haul, and other support roads will be located, constructed, and maintained in such~~
20 ~~a manner as to control and minimize channeling and other erosion;~~

21 ~~(h) that the operator will submit a progress report annually to the department;~~

22 ~~(i)(g) that all~~ opencut mining operations will be conducted to avoid range and forest fires and
23 spontaneous combustion and that open burning of ~~carbonaceous materials~~ will be conducted in accordance with
24 suitable practices for fire prevention and control. Approval of the plan for fire prevention and control under this
25 part does not relieve the permittee of the duty to comply with the permitting and air quality protection
26 requirements of Title 75, chapter 2.;

27 ~~(j)(h) that archaeological and historical values in areas to be mined on affected lands~~ will be given
28 appropriate protection;

29 ~~(k)(i) that except for those~~ postmine postmining land uses that do not require vegetation, each surface
30 area of the mined premises that will be disturbed will be revegetated when its use for extractive purposes is no

1 longer required;

2 ~~(h)(j)~~ that seeding and planting will be done in a manner to achieve a permanent vegetative cover that
3 is suitable for the ~~postmine~~ postmining land use and that retards erosion and that all seed will be drilled unless
4 otherwise provided in the plan;

5 ~~(m)(k)~~ that reclamation will be as concurrent with opencut mining operations as feasible and will be
6 completed within a specified length of time;

7 ~~(n)(l)~~ that surface water and ground water will be given appropriate protection, consistent with state law,
8 from deterioration of water quality and quantity that may arise as a result of the ~~operation~~ opencut mining
9 operations;

10 ~~(o)(m)~~ that noise and visual impacts on residential areas will be minimized to the degree practicable
11 through berms, vegetation screens, and reasonable limits on hours of operation; and

12 ~~(p)(n)~~ that any additional procedures, including monitoring, that are necessary, consistent with the
13 purposes of this part, to prevent significant physical harm to the affected land or adjacent land, structures,
14 improvements, or life forms will be implemented.

15 ~~(3)(4)~~ If reclamation according to the plan of operation has not been completed in the time specified,
16 the department, after 30 days' written notice, shall order the operator to cease mining and, if the operator does
17 not cease, may issue an order to reclaim, a notice of violation, or an order of abatement or may institute an
18 action to enjoin further operation and may sue for damages for breach of the conditions of the permit, for
19 payment of the performance bond, or for both.

20 ~~(4)(5)~~ (a) At any time during the term of the permit, the operator may for good reason submit to the
21 department a new ~~reclamation~~ plan of operation or amendments to the existing plan of operation, including
22 extensions of time.

23 (b) The department may approve the proposed new ~~reclamation~~ plan of operation or amendments to
24 the existing plan of operation if:

25 (i) the new plan of operation or amendments comply with the requirements of this section; and

26 (ii) the operator has in good faith ~~carried on~~ conducted opencut mining operations ~~reclamation~~ according
27 to the existing plan of operation and the proposed new plan of operation or amendments to the existing plan of
28 operation will result in reclamation as or more desirable than the reclamation proposed under the existing plan
29 comply with this part and the rules adopted pursuant to this part; or

30 ~~(ii)(iii)~~ it is highly improbable that reclamation will be successful unless the existing plan of operation is

1 replaced or amended.

2 ~~(c) When accepted, the proposed new reclamation plan or the proposed amendments to the existing~~
3 ~~plan become a part of the permit.~~

4 ~~—— (5) The operator shall provide a performance bond or an alternative acceptable to the department in~~
5 ~~an amount commensurate with the estimated cost of reclamation, but in no case may the bond be less than \$200~~
6 ~~an acre. The estimated cost of reclamation must be set forth in the reclamation plan.~~

7 (6) The permit, ~~reclamation plan~~ of operation, and amendments accepted by the department are a
8 public record and are open to inspection.

9 (7) The permit is effective when signed by the department and the operator and remains in force until
10 terminated by mutual consent or by the department upon 6 months' notice."
11

12 **Section 15.** Section 82-4-436, MCA, is amended to read:

13 **"82-4-436. Plan amendments ~~--venue by department~~.** (1) Unless an amendment to a plan of
14 operation, ~~reclamation plan~~, or other permit is proposed by the operator, the department may ~~modify~~ amend only
15 the terms of a plan of operation or permit only in compliance with this section.

16 (2) If the department believes, based on credible evidence, that continued ~~operation~~ opencut mining
17 operations under the terms of an existing plan of operation or permit would violate a substantive numerical or
18 narrative state standard or regulation or otherwise violate a purpose of this part, it may propose to the operator
19 an amendment to the plan of operation or permit.

20 (3) The department shall notify the operator of the proposed amendment in writing. The notice must
21 include:

22 (a) ~~an~~ identification of the existing plan of operation or permit;

23 (b) the justification for the amendment, including all test results or other credible evidence that the
24 department relied on in proposing the amendment; and

25 (c) the text, maps, drawings, and other appropriate information that constitute ~~of~~ the proposed
26 amendment.

27 (4) The operator may, within 15 days of receipt of the department's amendment notice, request a review
28 of the amendment by the department director. The amendment is not effective or enforceable until 15 days
29 following the issuance of the department's amendment notice or, if a review by the director is requested, until
30 15 days after the department director affirms or modifies the amendment if a review by the director is requested.

A decision by the department director is subject to the contested case provisions in 82-4-427 of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, parts 6 and 7.

(5) If the operator ~~does not appeal~~ requests a hearing on the proposed amendment, the amendment ~~becomes~~ is not effective and enforceable ~~15 days after the operator receives the notification~~ until completion of the contested case process.

~~(6) An action to challenge the issuance of an amendment pursuant to this section must be brought in the county in which the activity is proposed to occur. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the activity is proposed to occur.~~

~~(7) A judicial challenge to an amendment issued pursuant to this section by a party other than the amendment holder or applicant must include the party to whom the amendment was issued unless otherwise agreed to by the amendment holder or applicant. All judicial challenges of amendments for projects with a project cost, as determined under 75-1-203, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."~~

Section 16. Section 82-4-441, MCA, is amended to read:

"82-4-441. Penalty -- enforcement. (1) The department may assess against a person who violates any of the provisions of this part, rules adopted under this part, or provisions of a ~~reclamation~~ permit:

(a) a civil penalty of not less than \$100 or more than \$1,000 for the violation; and

(b) an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues following the service of notice of the violation.

(2) The department shall take into account the following factors in determining whether to institute a civil penalty action and in determining the penalty amount:

(a) the nature, circumstances, extent, and gravity of the violation;

(b) the violator's prior history of violations within the past 3 years;

(c) the economic benefit or savings, if any, to the violator resulting from the violator's action;

(d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation; and

(e) other matters that justice may require to decrease the amount of penalty.

(3) The department shall notify the person or operator of the violation. The department shall issue a statement of proposed penalty, including the penalty calculation that identifies and describes the factors considered pursuant to subsection (2), no more than 10 days after issuing the notice of violation. The person or operator may request a hearing before the board on the fact of the violation, the proposed penalty, or both, by filing a request for hearing within 30 days of receipt of the statement of proposed penalty. After a hearing, which must be conducted pursuant to the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, provided for in 82-4-427, the board shall make findings of fact, issue a written decision as to the occurrence of the violation and, if the board finds that the violation occurred, the amount of penalty warranted, and order the payment of a penalty in that amount. If the time for requesting a hearing expires without a hearing request, the department shall make the findings of fact and issue the written decision and order. The person or operator shall remit the amount of any penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, the person or operator shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. A person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the opencut ~~mine~~ is mining operations are located.

(4) The department may also issue an order requiring corrective action to remedy the violation. The person to whom the order is issued may request a hearing before the board within 30 days of receipt of the order. The hearing may be requested on the fact of the violation, the corrective action ordered, or both. The hearing must be conducted pursuant to the Montana Administrative Procedure Act, Title 2, chapter 4, part 6. A request for hearing stays the corrective action order.

~~(4)(5)~~ The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a permit issued pursuant to this part in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the opencut ~~mine~~ is mining operations are located."

NEW SECTION. Section 17. Suspension and revocation orders. (1) (a) The department may, after affording the permittee an opportunity for an informal conference, order the suspension of a permit if:

1 (i) the permittee fails to comply with a penalty order or a corrective action order issued pursuant to
2 82-4-441; or

3 (ii) the permittee has violated this part, a rule adopted pursuant to this part, or the permit and the
4 violation could reasonably be expected to create a danger to the health or safety of persons outside the permit
5 area or significant environmental harm to land, air, or water. The order of suspension must be served on the
6 permittee personally or by certified mail addressed to the permanent address shown on the most recently filed
7 annual report. The order of suspension must specify the provision of this part, the rules adopted pursuant to this
8 part, or the permit violated and the facts alleged to constitute the violation and must, if the violation has not been
9 corrected, order corrective action within a specified time period.

10 (b) The department may order immediate suspension of a permit whenever it finds that a violation of
11 this part, the rules adopted pursuant to this part, or a permit is creating an imminent danger to the health or
12 safety of persons outside the permit area. The order must require immediate corrective action.

13 (c) The permittee upon whom an order is served may file a request for hearing with the board within 30
14 days of service of the order. The request for hearing must specify the reason for the request. The filing of a
15 request for hearing on an order does not stay the suspension or corrective action requirement, but the board
16 may, upon written request of the permittee stay either or both of these requirements.

17 (2) If the permittee has not complied with the requirements set forth in the order of suspension within
18 the time limits set in the order, the permit may be revoked by order of the department and the performance bond
19 forfeited to the department. The permittee may request a hearing before the board by submitting a written
20 request stating the reason for the request to the board within 30 days after service of the order. If a hearing is
21 requested within the 30-day period, the permit may not be revoked and the bond may not be forfeited until the
22 board makes a final decision.

23 (3) If a permittee fails to pay the annual fee required by rule of the board or file the report required under
24 [section 1], the department shall serve personally or by certified mail a notice letter informing the permittee of
25 the failure. If the permittee does not file the report or pay the fee within 30 days of receipt of the letter, the
26 department may issue a penalty order pursuant to 82-4-441 or a suspension order pursuant to this section. If
27 the permit has been suspended, the department shall reinstate the permit upon compliance.

28 (4) Maintenance, monitoring, reporting, reclamation, and other activities required by statute, rule, or the
29 permit and intended to protect public health or safety or the environment must continue during any period of
30 suspension unless otherwise provided in the order.

(5) A hearing held pursuant to this section must be conducted in accordance with Title 2, chapter 4, part

6.

NEW SECTION. Section 18. Codification instruction. [Sections 1 and 17] are intended to be codified as an integral part of Title 82, chapter 4, part 4, and the provisions of Title 82, chapter 4, part 4, apply to [sections 1 and 17].

COORDINATION SECTION. Section 19. Coordination instruction. If __Bill No.__ [LC 1306] is passed and approved and contains a section amending 82-4-441, then [section 16 of this act] is void.

NEW SECTION. Section 20. Repealer. Section 82-4-423, MCA, is repealed.

NEW SECTION. Section 21. Applicability. The fee imposed pursuant to ~~82-4-422(2)(b)(iii)~~ 82-4-422(1)(F) applies to calendar year 2006 and succeeding calendar years.

NEW SECTION. SECTION 22. TERMINATION. [THIS ACT] TERMINATES JUNE 30, 2010.

- END -